

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PATRICK L. GAINES, JESSICA J.)	
KELLY, and ANTHONY TSE,)	
individually and on behalf of all others)	
similarly situated,)	
)	
Plaintiffs,)	Case No. 1:22-cv-01878
)	
v.)	Hon. Matthew F. Kennelly
)	
BDO USA, LLP,)	
)	
Defendant.)	
)	

JOINT NOTICE IN SUPPORT OF CLASS ACTION SETTLEMENT

Pursuant to this Court’s directives (ECF No. 53 at ¶ 11), Plaintiffs Patrick L. Gaines, Jessica J. Kelly, and Anthony Tse, and Defendant BDO USA (collectively, the “Parties”) respectfully submit this supplemental brief in support of the settlement of this matter.

Article 3 of the Settlement Agreement provided BDO with the option to hire an independent fiduciary to analyze the reasonableness of the settlement in accordance with Prohibited Transaction Class Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”). (ECF No. 51-3 at 8–9.)

In accordance with that section, BDO retained Fiduciary Counselors, a well-respected independent fiduciary firm that has analyzed a significant number of ERISA class action settlements. The Parties provided Fiduciary Counselors with sufficient information to review and evaluate the Settlement Agreement, including relevant pleadings and papers filed on the docket, certain discovery materials, confidential settlement documents, and any other materials requested.

In addition, Fiduciary Counselors conducted separate interviews with the Parties' counsel to discuss the Parties' claims and defenses, the Parties' process in negotiating the Settlement Agreement, and the terms of the Settlement Agreement relative to the potential outcome of litigation. Fiduciary Counselors complied with all relevant conditions set forth in PTE 2003-39.

On May 16, 2024, Fiduciary Counselors completed its analysis and issued its report, a true and correct copy of which is attached hereto as Exhibit A. In short, Fiduciary Counselors has concluded the settlement is fair and adequate in all respects. Fiduciary Counselors' qualifications, diligence and conclusions are contained in Exhibit A.

As part of this process, Fiduciary Counselors raised a question about the release provision contained in Section 2.33 of the Settlement Agreement. To address the item raised, the parties have agreed to add the following clause to potentially narrow the definition of "Released Claims" under the Settlement Agreement: "'Released Claims' also exclude individual claims for benefits that are unrelated to the enumerated topics contained elsewhere in Section 2.33." Since this modification, if anything, narrows the release contained in the Settlement Agreement, Plan participants are not negatively impacted by this change whatsoever.¹ For the Court's convenience, the modified settlement agreement is contained in Exhibit B and a redlined version of the applicable provision is contained in Exhibit C.

This change does not impact the proposed Final Approval Order (ECF No. 56) submitted by the Parties on April 25, 2024.

¹ Under similar circumstances, other courts have determined that a minor modification to a Settlement Agreement does not require an additional CAFA notice where the original notice met CAFA's requirements. *See, e.g., Steinfeld v Discover Fin Servs.*, 2014 WL 1309352, at *6 (N.D. Cal. March 31, 2014). This is especially the case where, as here, the modification "revised the releases, which made the settlement more favorable to class members." *Id.*, at *5.

Dated: May 17, 2024

Respectfully submitted,

/s/ J. Christian Nemeth

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CERTIFICATE OF SERVICE

I, J. Christian Nemeth, hereby certify that, on May 17, 2024, I caused the foregoing to be filed electronically using this Court's CM/ECF system, thereby serving such filing on all registered participants identified in the Notice of Electronic Filing in this matter on this date.

/s/ J. Christian Nemeth_____